

COMMONWEALTH OF PENNSYLVANIA

Deana Schleig : State Civil Service Commission
v. :
Public Utility Commission : Appeal No. 31094

Deana Schleig : Tricia S. Springer
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Deana Schleig challenging her one-day Alternative Discipline in Lieu of Suspension from regular Administrative Officer 3 PUC employment with the Public Utility Commission. A hearing was held August 3, 2023, via video, before Commissioner Pamela M. Iovino.

The Commissioners have reviewed the Notes of Testimony and Exhibits introduced at the hearing as well as the Briefs submitted by the parties. The issue before the Commission is whether the appointing authority had good cause to issue appellant a one-day Alternative Discipline in Lieu of Suspension from her Administrative Officer 3 PUC, regular status, position.

FINDINGS OF FACT

1. By letter dated March 3, 2023, appellant was notified of her one-day Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) from her position of Administrative Officer 3 PUC, regular status. The appointing authority charged appellant with failure to discharge her supervisory duties in that:

- A) Despite prior related instruction, on November 4, 7, 14, and 21, 2022, you failed to verify that a subordinate employee entered leave for absences from work resulting in a falsification of the time and attendance system of record.
- B) On November 4, 7, 14, and 21, 2022, despite having previously entered all or almost all of a subordinate employee’s FMLA¹ leave, you failed to enter leave for this employee’s FMLA covered absences from work or to communicate to them in a timely manner that you had not entered the leave resulting in a falsification of the time and attendance system of record.

¹ FMLA is the acronym for “Family Medical Leave Act.”

- C) On at least May 19, June 14, July 28, September 5, 2022,² you failed to verify that a subordinate employee entered the appropriate leave type for absences from work.
- D) On at least September 15, 2022, you inappropriately approved a full day of Sick Family leave request.

Comm. Ex. A (emphasis in original).

- 2. The appeal was properly raised before this Commission and was heard under Section 3003(7)(i) of Act 71 of 2018. Comm. Ex. B.³
- 3. Appellant began employment as an Administrative Officer in January 2015. She has been an Administrative Officer 3 PUC with the appointing authority since 2018. N.T. pp. 122-123.

² The appointing authority testified the proper date is September 15, 2022. N.T. pp. 83-84.

³ Appellant's request for a hearing on alleged discrimination under Section 3003(7)(ii) of Act 71 of 2018 was denied due to an insufficient allegation of discrimination. N.T. p. 12. As a result, the evidence submitted by the appointing authority intended to show whether other similarly situated employees were treated similarly for similar offenses will not be evaluated.

4. Appellant's job duties include monitoring and ensuring her subordinates record their absences, enter their absences in a timely manner, and that the absences are documented properly using the correct type of leave. N.T. pp. 30-31, 36, 154-155.
5. Appellant's Position Description includes the responsibility of approving her subordinates' timesheets and leave requests. N.T. p. 69; AA Ex. 9.
6. Appellant has taken multiple training sessions pertaining to her absence management responsibilities including:
 - A. May 31, 2011, July 20, 2013, and May 18, 2016: Absence Management Training for Supervisors.
 - B. May 14 and 15, 2016: in person absence management training seminar.
 - C. July 10, 2018: FMLA refresher training.
 - D. August 6, 2020: web-based Absence Management Training for Supervisors 2020.

N.T. pp. 61-63, 65-67; AA Exs. 7, 11, 12.

7. Appellant received the Commonwealth of Pennsylvania's Absence Program Manual. N.T. p. 68; AA Ex. 8.
8. In or about October 2022, the appointing authority began investigating the absences of one of appellant's subordinates. N.T. p. 30.
9. By email dated October 25, 2022, Human Resource Analyst 3 Hannah Smeltz notified appellant she can only approve a subordinate's request for a full day of sick leave if the subordinate provides justification. N.T. pp. 31-32; AA Ex. 13.
10. Appellant was told sick leave can be only used for an employee's reasonable travel to and from appointments and the appointment time. N.T. p. 33; AA Ex. 13.
11. Appellant was also told subordinates must enter leave timely. If they do not do so, she must either tell the subordinate to enter leave or enter it on their behalf. N.T. pp. 32-33; AA Ex. 13.
12. After the October 25, 2022 email, the investigation into the subordinate's use of leave continued. N.T. p. 34.

13. An audit of the subordinate's leave indicated she utilized sick leave on May 19, 2022 for a family member's medical appointment. AA Ex. 18.
14. As part of the investigation, appellant created a chart listing her subordinate's absences and indicating whether each absence had been entered into the timekeeping system and, if entered, the type of leave used. N.T. pp. 34-36; AA Ex. 15.
15. The chart, provided to Smeltz on December 15, 2022, indicated the subordinate had entered sick or sick family leave on June 14, July 28, and September 15, 2022. N.T. pp. 34-37; AA Ex. 15.
16. The chart also indicated the subordinate had not entered leave for November 4, 7, 14, and 21, 2022. N.T. p. 35; AA Ex. 15.
17. On February 22, 2023, appellant attended a Pre-Disciplinary Conference. N.T. p. 75; AA Ex. 2.

DISCUSSION

At issue before the Commission is whether the appointing authority had good cause to issue appellant a one-day Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) from her Administrative Officer 3 PUC, regular status, position.⁴ The appointing authority asserts appellant failed to properly carry out her supervisory duties when she did not properly monitor a subordinate’s use of leave. Specifically, the appointing authority charges appellant did not 1) verify four November 2022 absences, 2) properly enter Family Medical Leave Act (hereinafter “FMLA”) leave or inform a subordinate she was not entering the FMLA leave for the four November 2022 absences, 3) verify use of appropriate type of leave for absences , and 4) inappropriately approved a full day of sick family leave. The appointing authority presented evidence in support of its assertion appellant did not properly discharge her supervisory duties pertaining to monitoring her subordinate’s use of leave. Each individual charge shall be analyzed separately.

In an appeal challenging the suspension of a regular status employee, the appointing authority has the burden to present sufficient evidence to demonstrate the suspension was for good cause. *White v. Commonwealth, Department of Corrections*, 110 Pa. Commw. 496, 532 A.2d 950 (1987); 71 Pa.C.S.A. §§ 2603(c), 3003(7)(i). Good cause must relate to an employee’s competence and ability to perform her job duties, *Department of Corrections v. Ehnnot*, 110 Pa. Commw. 608,

⁴ The imposed action carries the same weight as if appellant had served a one-day suspension from her position as an Administrative Officer 3 PUC, regular status, with the appointing authority. Accordingly, the appeal will be analyzed as challenging a one-day suspension.

532 A.2d 1262 (1987), or must result from conduct which hampers or frustrates the execution of the employee's duties. *McCain v. Department of Education*, 71 Pa. Commw. 165, 454 A.2d 667 (1983).

The appointing authority presented the testimony of Human Resource Analysts 3 Hannah Smeltz and Laurie Keller, and Chief Administrative Law Judge Charles Rainey. Appellant testified on her own behalf.

The parties do not dispute the following facts. In or about October 2022, the appointing authority began investigating one of appellant's subordinate's absences and discovered there were absences she had never entered or had entered incorrectly into the timekeeping system. N.T. p. 30. To assist with the investigation, appellant created a chart listing her subordinate's absences and indicating whether each absence had been entered into the timekeeping system and, if entered, the type of leave used. N.T. pp. 34-36; AA Ex. 15. The chart, provided to Human Resource Analyst 3 Smeltz on December 15, 2022, indicated the subordinate had entered sick or sick family leave on June 14, July 28, and September 15, 2022. N.T. pp. 34-37; AA Ex. 15. The chart also indicated the subordinate had not entered leave for November 4, 7, 14, and 21, 2022. N.T. p. 35; AA Ex. 15. An audit of the subordinate's leave use revealed she had entered sick leave for a family member's appointment on May 19, 2022. AA Ex. 18.

First, the appointing authority presented evidence with respect to the charge that, despite prior related instruction, appellant failed to verify a subordinate entered leave for absences on November 4, 7, 14, and 21, 2022. Specifically, the

appointing authority presented testimony indicating appellant had prior instruction through multiple training sessions she attended both online and in person over the course of several years regarding the proper submission and monitoring of subordinates' leave use. *See* Finding of Fact 5. In addition, appellant had prior related instruction provided through the October 25, 2022 email wherein it was stated, "It's important that leave is being submitted timely..." N.T. pp. 32-33; AA Ex. 13. Additional notification of her responsibility is provided in appellant's Position Description which states she must approve leave requests. AA Ex. 9. The appointing authority asserts appellant did not properly monitor her subordinate's use of leave because there was no leave entered for November 4, 7, 14, and 21, 2022. N.T. pp. 38-39.

In response, appellant does not deny the subordinate failed to enter leave for the dates in question. Instead, appellant asserts she did not have notice she could receive discipline for failing to ensure her subordinate entered leave. According to appellant, the most recent training seminar was two years ago, the October 25, 2022 email was not from her supervisor, and neither her Employee Performance Reviews nor her interim performance evaluation provide any indication she was improperly monitoring her subordinates' use of leave. N.T. pp. 127, 128-129, 132-133; Ap. Ex. 8.

Upon review of the record, the Commission finds the appointing authority has presented sufficient evidence to support the charge pertaining to November 4, 7, 14 and 21, 2022 wherein appellant failed to verify a subordinate entered leave for absences from work. Specifically, as a supervisor, appellant should

know her job duties include monitoring the use of all of her subordinates' leave. The October 25, 2022 email, along with her prior training, is sufficient notice of her job duties to properly monitor the leave use of her subordinates. Thus, the Commission upholds this charge.

The appointing authority next charges that, despite previously entering all or almost all of a subordinate employee's FMLA leave, she did not enter the subordinate's FMLA leave for November 4, 7, 14, and 21, 2022 or communicate to the subordinate that she had not entered the leave on her behalf. In support of the charge, Human Resource Analyst 3 Smeltz explained, and appellant's chart created during the investigation into her subordinate's leave use shows, that on November 4, 7, 14, and 21, 2022 the subordinate was absent from work but did not submit any leave requests. N.T. pp. 38-39; AA Ex. 15. Although appellant had submitted FMLA leave on behalf of the subordinate before, she did not do so on any of the four dates in question. N.T. pp. 80-82; AA Ex. 17. Appellant did not follow up with the subordinate to make sure the absences were entered into the leave system. N.T. pp. 38-39. As a result, the subordinate received holiday pay to which she was not entitled and, therefore, had to repay. N.T. pp. 79-80. While the supervisor is not responsible for entering the subordinate's FMLA leave, she must still acknowledge the leave request and ensure the time, date, and type of leave is accurate. N.T. pp. 27-30.

In response, appellant testified she considers FMLA leave a confusing area but acknowledges she has not requested additional training. N.T. pp. 134, 141, 169. Appellant also testified she entered FMLA leave for the subordinate on several occasions. N.T. p. 134.

Upon review of the record, the appointing authority has presented sufficient evidence to support this charge. Specifically, appellant acknowledges entering FMLA leave for the subordinate on several occasions, but there is no indication she did so on November 4, 7, 14, or 21, 2022. Appellant did not present any testimony stating she advised her subordinate to submit FMLA or any type of leave. Instead, despite having previously assisted her subordinate by entering the FMLA leave, instead, no leave was entered into the system. Thus, the Commission upholds this charge.

The appointing authority presented evidence to support the third charge, asserting appellant failed to verify the subordinate entered the appropriate type of leave for absences on May 19, June 14, July 28, and September 15, 2022.⁵ Specifically, May 19, 2022 appellant's subordinate entered sick leave for a family member's medical appointment. N.T. pp. 43-44; AA Ex. 18. The subordinate should have used sick family leave on May 19, 2022 because this absence was on behalf of a family member. N.T. p. 44. Similarly, on June 14, 2022, the subordinate entered a full day of sick leave for a family member's medical appointment. N.T. p. 46. For this June 14, 2022 appointment, the subordinate should have provided justification for a full day of leave and used sick family leave instead of sick leave. N.T. p. 46. As to July 28, 2022, the subordinate entered sick leave for a family member's medical appointment. N.T. p. 47. The subordinate should have entered sick family leave on July 28, 2022 because the absence was taken on behalf of a family member. N.T. p. 46.

⁵ Because the fourth charge also relates to the subordinate's use of leave on September 15, 2022, the Commission will address both the third and fourth charges simultaneously solely as they relate to this date.

The Absence Management Policy states an employee cannot use sick leave for a family member's illness or appointments. N.T. p. 44. If an employee uses leave for a family member's medical appointment they must use sick family leave. N.T. p. 42. In all three instances, appellant failed to review the subordinate's remarks to ensure the proper type of leave was entered, notice the improper leave designation, reject the leave slip, or tell the subordinate to resubmit the absence with the proper leave designation. N.T. pp. 45-47.

In response, appellant testified she did not have proper notice of any deficiencies in her performance related to approving leave requests. Specifically, appellant testified neither her Employee Performance Reviews nor her January 28, 2023 mid-year progress review provide any indication she was not properly monitoring the leave use for her subordinates. N.T. pp. 127-129; Ap. Exs. 4. She also testified the most recent training regarding her time and attendance duties was taken over two years ago. N.T. pp. 132-133.

Upon review of the record, the Commission finds the appointing authority has presented sufficient evidence to support the charge as it relates to May 19, June 14, and July 28, 2022. Specifically, appellant is responsible for ensuring her subordinates enter their leave, enter the appropriate type of absence, rejecting leave slips if the inappropriate type of absence is entered, and telling her employees to enter the appropriate type of leave. In all three instances, appellant should have rejected the leave slip for an improper leave designation because the subordinate requested sick leave instead of sick family leave. Pertaining specifically to June 14, 2022, appellant should have also rejected the leave slip because it did not provide justification for a full day of leave. Thus, the Commission upholds this charge as it relates to May 19, June 14, and July 28, 2022.

With respect to the charges relating to September 15, 2022, the appointing authority submitted evidence to support the third charge wherein it asserts appellant failed to verify the subordinate entered the appropriate type of leave for September 15, 2022. The appointing authority also submitted evidence in support of the fourth charge alleging appellant inappropriately approved a full day of her subordinate's sick family leave on September 15, 2022.

The appointing authority reiterated their testimony explaining sick family leave only covers an eligible family member's illness or drive to and/or from a medical appointment. N.T. pp. 84-85. In this instance, appellant should not have approved a full day of sick family leave based upon the comments provided by the subordinate. N.T. pp. 85-86. According to the appointing authority, if appellant had properly asked the subordinate for justification to take an entire day of sick family, appellant would not have approved the leave request. N.T. pp. 85-86.⁶

In response, appellant explained she had a family member undergo the same type of medical procedure and it did, in fact, require a full day of leave. N.T. p. 145. In addition, appellant is not privy to information regarding the family member's ability to care for herself, the driving distance to and/or from the medical appointment, if anesthesia was required, how long the procedure took, how long recovery took, or if there were any complications. N.T. pp. 144-145.

⁶ When questioned, the subordinate agreed to alter the leave slip from a full day of sick family to a half day of sick family and a half day of annual leave. AA Ex. 18.

Upon review of the record the Commission finds the appointing authority has not presented sufficient evidence to uphold either charge pertaining to the subordinate's use of a full day of sick family leave on September 15, 2022. In this instance, the Commission finds appellant credible⁷ that she based her approval of the leave on her personal experience instead of quizzing the subordinate on the family member's medical condition, location of the appointment, or other details. Therefore, with respect to September 15, 2022, the appointing authority has failed to establish a failure to properly carry out her supervisory duties.

In summation, upon review of the record in its entirety, the Commission finds the appointing authority has presented sufficient evidence to show appellant failed to properly discharge her supervisory duties regarding a subordinate's use of leave. Specifically, the appointing authority has clearly shown appellant did not verify the subordinate entered leave for absences on November 4, 7, 14, and 21, 2022 and that she neither entered her subordinate's FMLA leave on those dates nor advised the subordinate to enter the leave. The appointing authority has also clearly shown appellant did not verify the subordinate had entered the proper type of leave on May 19, June 14, and July 28, 2022. We note the appointing authority did not present evidence sufficient to establish appellant failed to verify the subordinate entered the appropriate leave for September 15, 2022. The appointing authority also failed to prove appellant inappropriately approved a full day of sick family leave for the subordinate's September 15, 2022 absence.

⁷ The Commission has the inherent power to determine the credibility of witnesses and the value of their testimony. *McAndrew v. State Civil Service Commission (Department of Community and Economic Development)*, 736 A.2d 26 (Pa. Commw. Ct. 1999).

Nonetheless, where the appointing authority bases a suspension upon several charges and some, but not all of the charges are proven, the Commission may uphold the discipline if there is good cause for suspension based upon the charges that are proven. *See, e.g., Lewis v. Commonwealth of Pennsylvania, Department of Health (Lewis II)*, 70 Pa. Commw. 531, 534, 453 A.2d 713, 714 (1982). Here, the appointing authority established the substance of the charge against appellant - failure to properly discharge her supervisory duties. Appellant's failure to properly discharge her supervisory duties reflects negatively upon her competency and ability to perform her job duties. *Ehnot, supra*. Therefore, the appointing authority presented sufficient evidence to demonstrate good cause for the suspension. Accordingly, we enter the following:

CONCLUSION OF LAW

The appointing authority has presented evidence sufficient to establish good cause for suspension under Section 2603(c) of Act 71 of 2018.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Deanna Schleg challenging her one-day Alternative Discipline in Lieu of Suspension from regular Administrative Officer 3

PUC employment with the Public Utility Commission, and sustains the action of the Public Utility Commission in issuing the one-day Alternative Discipline in Lieu of Suspension of Deanna Schleig from regular Administrative Officer 3 employment.

State Civil Service Commission

Maria P. Donatucci
Chairwoman

Gregory M. Lane
Commissioner

Pamela M. Iovino
Commissioner

Issued: January 22, 2024